IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
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ORDER
Shri Ram Chandra Mali
vs
The Judge, Labour Court, Udaipur & Ors.

S.B. CIVIL WRIT PETIITON NO.3790/2002 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 29th August, 2006

PRESENT
HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.R.S. Saluja, Advocate, for the petitioner.
Mr.C.P. Trivedi, Advocate, for the respondents.

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BY THE COURT: -

The petitioner in this writ petition has challenged the award passed by the learned labour court dated 24th July, 2001. The labour court by its award on a reference being made to it by the appropriate Government held removal of the petitioner -workman to be just and legal. The learned labour court held that the workman did not complete 240 days in the service of the management during the calender year immediately preceding the date of his retrenchment.

Shri R.S. Saluja, learned counsel for the petitioner argued that the claim of the petitioner -workman was that he was initially appointed as Beldar on 24.4.1988, but the respondents later appointed him on the post of Pump Driver w.e.f. 1st Sept., 1988. On which post, he continued to work up to 31.1.1989. His services however were terminated w.e.f. 1.2.1989 without any notice to him and against the principles of natural justice. Compliance of provisions of Section 25F of the Industrial Disputes Act, 1947 has not been made. He further argued that since the petitioner was attending his ailing mother, he could not produce the evidence before the tribunal. He has also referred to three medical certificates of petitioner covering the period from 15.5.1999 to 13.6.1999, 19.2.2000 to 28.3.2000 and 3.1.2001 to 31.1.2001 and has argued that subsequent to the death of his mother, he could not appear before the labour court for producing evidence on account of his illness, therefore, this Court may consider for remanding the matter back. According to him, version of the management that the petitioner abandoned services on his own stood falsified from the statement of their own witness Shri Rajaram, who in his cross-examination stated that such fact was never entered anywhere in the record. Not only this, this witness also stated that after the retrenchment of the petitioner, many other labours were engaged. It has been argued that the management has not

come out with the case that the certain seniority list was published at the time of retrenchment of the petitioner. In these circumstances, even if the petitioner is taken to have not completed 240 days, non-compliance of Section 25F and 25H of the Industrial Disputes Act is nonetheless proved.

On the other hand, Shri C.P. Trivedi, learned counsel for the respondents has argued that the petitioner himself was grossly negligent in conducting his case. In the first place, he abandoned the service and secondly, he did not pursue the matter from the date of retrenchment i.e., 1.2.1989. The reference was made inordinately delayed on 30.9.1996 after more than seven years. Moreover, even after reference, the petitioner did not care to attend the proceedings before the learned labour court after filing statement of claim. He has argued that three medical certificates of *Aryuvedic Chikitsak* produced by the petitioner did not inspire any confidence because very minor kind of ailments have been mentioned therein and they pertained to only period of three months at much later stage than the proceedings have been taken before the learned labour court. It has been argued that petitioner working with the respondents was confined to just 104 days during the period from April, 1988 to August, 1988 and there was thus no violation of Section 25F of the Industrial Disputes

Act. There was also no violation of Section 25H and 25H of the Industrial Disputes Act because the petitioner has not given name of any person who allegedly was junior to him and was still retained in service or subsequently appointed afresh. It has therefore been prayed that the writ petition may be dismissed.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the record.

In the present case, the petitioner not only was negligent in agitating his grievance at the earliest stage when reference was made by the petitioner enormously delayed by seven years but even after reference, he was negligent in conducting his case before the learned labour court and failed to produce any evidence whatsoever. The three medical certificates produced by him have all been issued by *Aryuvedic Chikitsak* wherein he has shown to be suffering from aliments like stomach disorder, loose motion and fever. These certificates pertained to the month of May/June, 1999 and Dec., 2000 and Jan., 2001. The award however has been passed by the learned labour court on 24.7.2001. No explanation was given as to why efforts were not made to produce the evidence before the learned labour court. Even otherwise, as per the contention of the petitioner himself,

he started working with the respondents on 24.7.1988 and continued to work with them only upto 31.1.1989, which period hardly, comes to 8 months. In the face of the finding that his working was confined to only 107 days during this period, there can be hardly any justification for remand of the case. On the question of violation of Section 25G and 25H of the Industrial Disputes Act, the petitioner solely based his claim on the statement of one Shri Rajaram wherein he stated that they engaged certain other labours. This statement by itself does not provide any proof of the fact that who was engaged after the petitioner in which the petitioner was working and whether such person was junior to the petitioner. In such circumstances, the petitioner has utterly failed to prove violation of Section 25G and 25H of the Industrial Disputes Act.

In the result, there being no merit in the present writ petition, the same is dismissed with no order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-